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12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 OAKLAND DIVISION

15 NATIVE VILLAGE OF KIVALINA and CITY  
OF KIVALINA,

16 Plaintiffs,

17 vs.

18 EXXON MOBIL CORPORATION; BP P.L.C.;  
BP AMERICA, INC.; BP PRODUCTS NORTH  
19 AMERICA, INC.; CHEVRON CORPORATION;  
CHEVRON U.S.A., INC.; CONOCOPHILLIPS  
20 COMPANY; ROYAL DUTCH SHELL PLC;  
SHELL OIL COMPANY; PEABODY ENERGY  
21 CORPORATION; THE AES CORPORATION;  
AMERICAN ELECTRIC POWER COMPANY,  
22 INC.; AMERICAN ELECTRIC POWER  
SERVICES CORPORATION; DTE ENERGY  
23 COMPANY; DUKE ENERGY CORPORATION;  
DYNEGY HOLDINGS, INC.; EDISON  
24 INTERNATIONAL; MIDAMERICAN ENERGY  
HOLDINGS COMPANY; MIRANT  
25 CORPORATION; NRG ENERGY; PINNACLE  
WET CAPITAL CORPORATION; RELIANT  
26 ENERGY, INC.; THE SOUTHERN COMPANY;  
AND XCEL ENERGY, INC.,

27 Defendants.

CASE NO. C 08-01138 SBA

**RE-NOTICE OF MOTION AND  
MOTION OF CERTAIN OIL  
COMPANY DEFENDANTS TO  
DISMISS PLAINTIFFS'  
COMPLAINT PURSUANT TO FED.  
R. CIV. P. 12(b)(1)**

**[Memorandum of Points and  
Authorities and Declaration of Daniel  
P. Collins in Support Thereof  
Previously Filed on June 30, 2008;  
Reply Memorandum in Support  
Thereof Previously Filed on  
November 18, 2008]**

Time: May 19, 2009, 1:00 P.M.  
Ct. rm.: Courtroom 3, 1301 Clay Street,  
Oakland, California  
The Honorable Sandra B. Armstrong

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 BP PRODUCTS NORTH AMERICA INC.

**RE-NOTICE OF MOTION AND MOTION**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on May 19, 2009 at 1:00 P.M., or as soon thereafter as counsel may be heard in Courtroom 3 of the above-captioned Court, located at 1301 Clay Street, Oakland, California, 94612, Defendants Shell Oil Company, Exxon Mobil Corporation, Chevron Corporation, Chevron U.S.A. Inc., ConocoPhillips Company, BP America Inc., and BP Products North America Inc. (“Oil Company Defendants” or “Defendants”) will and hereby do move to dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(1).

By this motion, Defendants seek an order from this Court dismissing the case with prejudice. This motion is based on this Re-Notice of Motion and Motion; the “Notice of Motion and Motion of Certain Oil Company Defendants to Dismiss Plaintiffs’ Complaint Pursuant to Fed. R. Civ. P. 12(b)(1)” previously filed on June 30, 2008 (the “June 30, 2008 Notice of Motion”); the Memorandum of Points and Authorities attached to the June 30, 2008 Notice of Motion; the Declaration of Daniel P. Collins filed concurrently with the June 30, 2008 Notice of Motion and the attachments to that Declaration; the “Reply Memorandum in Support of Motion of Certain Oil Company Defendants to Dismiss Plaintiffs’ Complaint Pursuant to Fed. R. Civ. P. 12(b)(1)” previously filed on November 18, 2008; the pleadings and records on file in this action; such additional authority and argument as may be presented at the hearing on this Motion; and such other matters of which this Court may take judicial notice.

This Re-Notice of Motion and Motion are being filed pursuant to this Court’s February 18, 2009 Order. In accordance with that Order, the Oil Company Defendants are not re-filing any of the above-mentioned pleadings that have been previously filed.

Pursuant to Section C of this Court’s Standing Order (as revised June 16, 2008), Defendants, through counsel, certify that, as contemplated in the stipulation previously filed with the Court on May 8, 2008, counsel for Defendants and counsel for Plaintiffs met and conferred telephonically on May 19, 2008, concerning, *inter alia*, the grounds to be asserted in this motion.

1 Dated: February 19, 2009

Respectfully Submitted,

2 MUNGER, TOLLES & OLSON LLP

O'MELVENY & MYERS LLP

3 By: /s/ Daniel P. Collins  
Daniel P. Collins

By: /s/ John F. Daum  
John F. Daum

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5 SHELL OIL COMPANY

Attorneys for Defendant  
EXXONMOBIL CORPORATION

6 KING & SPALDING LLP

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By: /s/ Andrew B. Clubok  
Andrew B. Clubok

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CHEVRON CORPORATION and CHEVRON  
10 U.S.A. INC.

Attorneys for Defendant  
CONOCOPHILLIPS COMPANY

11 ARNOLD & PORTER LLP

12 By: /s/ Matthew Heartney  
Matthew Heartney

13 Attorneys for Defendants  
BP AMERICA, INC., AND BP PRODUCTS  
14 NORTH AMERICA, INC.

**DECLARATION PURSUANT TO GENERAL ORDER 45, SECTION X**

I, Daniel P. Collins, declare and attest, pursuant to this Court's General Order 45, section X, subparagraph B, that I am an ECF User and the filer of this document and that concurrence in the filing of this document has been obtained from each of the other signatories (in addition to myself) shown on page 2 of this document. I further declare and attest, pursuant to that same subparagraph of General Order 45, that I will maintain records to support this concurrence for subsequent production for the court if so ordered or for inspection upon request by a party until one year after final resolution of the action (including appeal, if any).

I declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Dated February 19, 2009

/s/ Daniel P. Collins  
Daniel P. Collins